Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets	)	WT Docket No. 07-250
	)	
	)	

To: The Commission

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® ("CTIA") hereby replies to comments submitted in response to the Commission's *Further Notice of Proposed Rulemaking* in the above-captioned proceeding, and the Wireless Telecommunications Bureau's subsequent request for comment on the impact of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("Accessibility Act") on the *FNPRM*'s proposals.[1] As detailed in these reply comments, CTIA urges the Commission to implement the expansion of Hearing Aid Compatibility ("HAC") requirements to new services and handsets in a manner consistent with the new Accessibility Act and the Commission's successful regulatory approach based on collaboration and standards adoption, with appropriate consideration of technical feasibility and product marketability. In addition, the Commission must decline unwarranted and overreaching invitations to expand liability for third-party services, to adopt inappropriate approaches to compliance for multi-mode

[1] *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11167 (2010) ("*FNPRM*"/"*Second Report and Order*"); Public Notice, *Wireless Telecommunications Bureau Requests that Comments in Hearing Aid Compatibility Proceeding Address Effects of New Legislation*, WT Docket No. 07-250, DA 10-1936 (WTB rel. Oct. 12, 2010).

handsets, and to adopt inadequate transitions periods for regulatory compliance. Finally, and particularly given the new Accessibility Act's emphasis on HAC compliance for "hearing aids *that are designed to be compatible* with telephones," the Commission should encourage hearing aid manufacturers to comply with disclosure requirements similar to those imposed on the wireless industry and educate the hearing loss community about how best to select a HAC-certified wireless handset for a particular hearing aid device.

I. Introduction

The record underscores the broad industry support for the Commission's overall objectives in the *FNPRM* and Congress's related Accessibility Act goals.[2] Moreover, it is reflective of the Commission's and stakeholders' efforts to achieve consensus in this area that industry and consumer stakeholders share many of the same objectives and agree on several important points regarding the scope of the Commission's HAC authority.[3] In all events, as CTIA and other commenters explain, the Commission must ensure that it faithfully implements the Accessibility Act's HAC provisions, which largely ratify the Commission's measured approach to date.[4] As CTIA explained in its comments, in maintaining this approach the Commission can achieve Congress's twin goals of continuing to improve the usability of handsets for hearing aid users while preserving the flexibility to offer innovative wireless handsets.[5] In the near term, the Commission can take actions to promote usability for hearing aid

[2] *See* ATIS Comments at 4; AT&T Comments at 2; Blooston Rural Carriers at 5; Clearwire Comments at 3-4; CTIA Comments at 6-9; Motorola Comments at 4-5; TIA Comments at 3-4.

[3] *See* HLAA et al. Comments at 2-4.

[4] *See* Blooston Rural Carriers Comments at 5; Clearwire Comments at 3-4; CTIA Comments at 6-9; TIA Comments at 3-4.

[5] CTIA Comments at 4-5.

users by, for example, taking prompt action to incorporate the anticipated ANSI C63.19-2010 standard into its rules and equipment authorization procedures. In this *FNPRM* and the forthcoming 2010 Review, the Commission should continue to preserve innovation by accounting for technical feasibility and marketability limitations as Section 710 of the Communications Act requires. In addition, the Commission can ensure HAC issues are addressed more comprehensively by encouraging all stakeholders, including hearing aid manufacturers, to collaborate on consistent consumer education and disclosure.

II. The Commission's Implementation of HAC Requirements Must Be Consistent with the Accessibility Act.

Consistent with the comments of industry and consumer stakeholders, CTIA supports the expansion of HAC requirements to new wireless handsets and services. As CTIA and others explained, however, the Accessibility Act has largely superseded the Commission's proposed interpretation of Section 710(b)(2) of the Communications Act.[6] While the Commission's desired outcome is similar to what the revised statute requires, the Commission must interpret and apply the statute in its amended form.

In that regard, the Accessibility Act largely reflects a ratification of the Commission's measured approach to wireless HAC implementation since 2003. Indeed, Congress viewed the Commission's approach to wireless HAC requirements as a model to emulate in promoting accessibility for advanced communications services generally.[7] For the Communications Act's HAC provisions in particular, the Accessibility Act expressly retains the Commission's current HAC regime for CMRS handsets and for multi-mode handsets that utilize both traditional CMRS

[6] Clearwire Comments at 3-4; CTIA Comments at 6-7; TIA Comments at 3-5.

[7] *See* H.Rep. No. 111-564 at 24, 26.

as well as new technologies.[8] Considerations of technical feasibility and product marketability remain as relevant today as before the Accessibility Act's enactment, and the Commission must ensure that any new rules arising from this *FNPRM* address these basic statutory criteria.[9]

III. The Accessibility Act Clearly Addresses the Allocation of Liability for Compliance, the Handsets Subject to HAC Requirements, and Appropriate Timetables for Complying with the Commission's HAC Requirements.

A. *Third Party Limited Liability*

There is uniform understanding among industry and consumers that any responsibility for stand-alone third party service and product offerings should rest solely with those third party providers.[10] As CTIA explained, the Accessibility Act's Section 2 third party limited liability framework addresses the extent to which HAC obligations may derive from the acts and omissions of third parties.[11] HLAA et al., however, urge the Commission hold a service provider or manufacturer responsible for third parties' HAC compliance where it has a licensing or other contractual agreement with a VoIP service or application provider.[12] As described below, this approach however would be inconsistent with the developing wireless ecosystem, the new statute, and the Commission's historical approach to HAC compliance.

---

[8] *See* Accessibility Act § 102(a)(2)(B) (to be codified at 47 U.S.C. § 610(b)(4)(B)) (defining "telephones used with public mobile services" as including handsets "used in whole *or in part* with" common carrier mobile services) and § 102(d) (to be codified as 47 U.S.C. § 610(h)) (rule of construction providing that nothing in the Accessibility Act "shall be construed to modify" the wireless HAC rules).

[9] *See* 47 U.S.C. § 610(b)(2)(C). *See also Second Report and Order* at ¶18.

[10] *See* ATIS Comments at 4-5; AT&T Comments at 3-4; CTIA Comments at 9-11; HLAA et al. Comments at 5-6; Motorola Comments at 6-7; TIA Comments at 5-6.

[11] CTIA Comments at 9-11.

[12] HLAA et al. Comments at 6.

CTIA expects that, based on current technologies, voice applications affirmatively added by the consumer post-purchase are unlikely to affect the HAC rating of a wireless handset because such applications must adhere to the handset's technical specifications in order to be permitted access to the handset. HLAA et al.'s recommended approach, however, would be prohibitive in an open access environment, and could potentially run afoul of Section 2 of the Accessibility Act. Section 2 of the Accessibility Act limits HAC compliance liability to the extent a covered entity is (1) a "passive conduit" or (2) merely enables consumers to access or acquire third party applications or services.[13] In an open access environment, many "agreements" with third party application or service providers do little more than to memorialize those very functionalities. For example, a manufacturer's or service provider's agreement or other arrangement with a third party VoIP provider to merely provide the latter with an agnostic application programming interface ("API") or similar platform is not tantamount to the provision of a VoIP service.

More fundamentally, the Commission has consistently limited its application of the HAC rules to services and products the manufacturer or service provider affirmatively "offers" directly to consumers.[14] Holding the CMRS provider offering the underlying broadband connection liable for the third party's regulatory compliance is directly contrary to precedent and

[13] Accessibility Act § 2(a). Liability would only attach insofar as a manufacturer or service provider relies on the third party's product for *its own* HAC compliance. *See id.* § 2(b).

[14] *See* 47 C.F.R. § 20.19(a)(1) (HAC rules apply to CMRS providers "to the extent that they offer" a covered CMRS service). In this regard as well, the Commission has expressly determined that a wireless carrier's provision of broadband Internet access is *not* CMRS, specifically finding that where "users of a mobile wireless broadband Internet access service need to rely on another service or application, such as certain voice over Internet Protocol (VoIP) services that rely in part on the underlying Internet access service," the "mobile wireless broadband Internet access service itself is not an 'interconnected service' and thus by definition is not CMRS." *See Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, ¶¶ 44-45 (2007).

undermines the market-based open access model that the Commission has encouraged, that consumers have demanded, and that has proven beneficial to handset innovation. Again, covered entities should be responsible for the HAC compliance of VoIP applications that are affirmatively built-in or available at the point of purchase as part of the manufacturer's or service provider's consumer offering, but not VoIP applications added post-purchase by the end user.[15] Manufacturers and service providers are already required to disclose that certain modes may not have been tested and rated for HAC purposes, so in the unlikely event that a consumer affirmatively chooses to add voice applications that affect the HAC rating of a wireless handset, the burden should be on the voice application provider offering the product to disclose the consequences of such action to the consumer.[16]

B. *Multi-Mode Devices*

The Hearing Industries Association ("HIA") asserts there is a risk that manufacturers and service providers could circumvent the rules by selling multi-use devices that do not include voice capability initially, but have the potential to have voice capability activated or installed later.[17] The Accessibility Act, however, expressly amends Section 710's HAC requirements to handsets that are "intended to be held to the ear in a manner functionally equivalent to a telephone."[18] Thus, as a practical matter HIA's concern is implausible. A blanket application of HAC requirements to multi-use devices that merely have the potential to utilize advanced

[15] *See* CTIA Comments at 9; *see also* TIA Comments at 6.

[16] *See* CTIA Comments at 10; TIA Comments at 6. Such disclosure should come from the third party, as the manufacturer and service provider cannot predict the third party services and applications that consumers may download to their handsets. *See* AT&T Comments at 4 n.7 (such disclosure should not come from the manufacturer or service provider).

[17] HIA Comments at 8-9.

[18] *See* Accessibility Act § 102(a) (to be codified at 47 U.S.C. § 610(b)(1)(C)).

communications services, as HIA seems to suggest, would fail to account for Section 710's explicit qualifying language and could subject a wide-range of innovative wireless devices to significant requirements that have little bearing on the manufacturer's intended use of the product, much less a hearing aid user's ability to use such a device. The statute thus already addresses HIA's concern, and there is no need for the Commission to adopt rules in this area.

C. *Transition Period*

HIA urges the Commission to adopt a transition period that is no longer than "the minimum amount of time needed for a new product cycle."[19] Any further limits on the public mobile services exemption, however, including compliance deadlines, must account for the factors enumerated in the statute such as technical feasibility, product marketability, and the public interest generally.[20] Section 102(c)(2) of the Accessibility Act, moreover, similarly requires "appropriate" timetables for advanced communications services handsets that also account for technical feasibility and product marketability.[21] HIA's recommended "minimum" amount of time would not necessarily be an "appropriate" timeframe for the Commission to require implementation of the HAC rules or otherwise appropriately account for other statutory criteria. As the Commission recognized in the *Second Report and Order*, two years is an appropriate minimum transition period for covered entities to comply with any new HAC rules.[22]

---

[19] HIA Comments at 9.

[20] *See supra* at 2-3; CTIA Comments at 6-9.

[21] Accessibility Act § 102(c)(2) (to be codified at 47 U.S.C. § 610(e)).

[22] *See* Clearwire Comments at 5; CTIA Comments at 11-12; Motorola Comments at 10-11; Rural Telecommunications Group at 7; *see also* TIA Comments at 7-9 (transition periods must reflect the modified statute and continue to account for technical feasibility and product marketability).

IV. The Commission Should Collaborate with All Stakeholders and Other Federal Agencies to Address HAC Issues More Comprehensively.

HIA recommends the Commission enforce HAC requirements broadly on the wireless industry and allow only a minimum number of exemptions and waivers.[23] The Commission already proactively enforces its HAC requirements, however, as evidenced by the large number of enforcement actions and Consent Decrees issued in recent years.[24] HIA's related suggestion that relief from Section 710's HAC requirements may derive only from Section 710's waiver provisions flatly ignores the Accessibility Act's provision for appropriate "timetables or benchmarks" and its preservation of the existing wireless HAC rules.[25]

HIA's comments also imply that wireless handset manufacturers will not proactively work to implement new HAC requirements absent a blanket obligation.[26] In reality, under its limited public mobile services exemption the wireless industry has expended substantial resources to comply with the rules and to educate consumers, industry professionals and hearing health care providers about the ANSI C63.19 standard and compatible wireless handsets. The result has been a resounding success for the Commission, the wireless industry, and most importantly, consumers who use hearing aids.

---

[23] HIA Comments at 3-5.

[24] *See* Public Notice, FCC Enforcement Advisory, *Enforcement Bureau Takes Action to Enhance Access to Digital Wireless Service for Individuals with Hearing Disabilities*, DA 10-93 (EB rel. Jan. 15, 2010); *see also* http://www.fcc.gov/eb/ada/ (list of HAC enforcement actions).

[25] *See* HIA Comments at 3-4.

[26] *See* HIA Comments at 4 ("Treating non-CMRS wireless telephones as an exempted service would undermine" Commission policies).

One important area where the underlying record is disturbingly sparse, however, is with respect to the steps hearing aid manufacturers are taking to either ensure their products are designed to be compatible with HAC-certified wireless handsets, or to educate their customers about the HAC ratings of hearing aids and how to choose a HAC wireless handset. The actions of hearing aid manufacturers are critical, however, because Section 710 of the new statute explicitly requires that covered wireless handsets must only be HAC "with hearing aids *that are designed to be compatible* with telephones" that meet an applicable industry standard.[27] Congress thus recognized that manufacturers' ability to ensure that telephones are universally usable with hearing aids is necessarily dependent on the capabilities of hearing aid devices themselves. Indeed, the Commission's chosen methodology of assessing HAC compliance – the ANSI C63.19 standard – itself is premised on the availability of hearing aid device ratings. The continued disparity between the Commission's requirements for disclosure and education and the lack of any such requirements for hearing aid manufacturers may contribute to consumer confusion about the usability of new HAC-certified wireless handsets with hearing aids. In short, hearing aid users will benefit the most if both handset *and* hearing aid manufacturers participate in meaningful implementation of the ANSI C63.19 standard.

The wireless industry remains supportive of the Commission's HAC regulatory framework, but imposing new regulatory obligations on handset manufacturers and service providers can only go so far, however, toward maximizing the number of handset models that are usable with hearing aid devices. Thus, before additional burdens are imposed on the wireless industry, the Commission should work with relevant federal agencies to help them determine and implement appropriate HAC testing and rating requirements or standards appropriate for hearing

[27] 47 U.S.C. § 610(b)(1) (emphasis added). This language was preserved in the Accessibility Act. *See* Accessibility Act § 102(a)(1).

aid devices. Through collaboration with all stakeholders, the Commission should also encourage hearing aid manufacturers to comply with disclosure requirements similar to those imposed on the wireless industry and educate the hearing loss community about how best to select a HAC-certified wireless handset for a particular hearing aid device.

V. Conclusion

For the foregoing reasons, and those addressed in CTIA's comments, the Commission should expand the scope of the HAC rules consistent with the Accessibility Act's amendments to Section 710 and third party liability limitations. CTIA also encourages the Commission to initiate outreach to other federal government agencies to ensure that the efforts of hearing aid manufacturers work more fully in tandem with the Commission's policies.

Respectfully submitted,

By: /s/ *Matthew. B. Gerst*

Matthew B. Gerst
Counsel, External & State Affairs

Michael F. Altschul
Senior Vice President and General Counsel

Christopher Guttman-McCabe
Vice President, Regulatory Affairs

Scott Bergmann
Assistant Vice President, Regulatory Affairs

CTIA – The Wireless Association®
1400 Sixteenth Street, NW
Suite 600
Washington, DC 20036
(202) 785-0081
www.ctia.org

November 22, 2010